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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MERITAGE HOMEOWNERS')	
ASSOCIATION)	No. 3:17-cv-00267-AA
)	
Plaintiff,)	DEFENDANTS' MOTION TO
Vs.)	ALTER/AMEND PURSUANT
)	TO FRCP 59(e)
NICHOLAS LEE WATT)	
PATRICIA MOUDY WATT)	
)	
Defendants.)	

LR Certification of Conferral

Pursuant to LR 7-1(a), counsel for the Watts attempted to confer with opposing counsel regarding this Motion via email exchange on September 8, 2017 and in such email addressed the claim that is subject of this Motion. As of the time of filing this motion, no response was received and the email was not returned undeliverable. Counsel for the Watts does not believe the parties agree on the substance of the Motion.

Motion

Nicholas and Patricia Watt, by and through their counsel Michael D. O'Brien hereby

MOVE this Court to alter or amend a portion of its Opinion and Order issued August 13, 2017 in this case. {Docket #44} Defendants ask this Court to reconsider and clarify that portion of the Opinion and Order pertaining to the “Window Litigation Settlement Agreement” and the impact caused by Defendants disclosure of Meritage’s garnishment in their bankruptcy papers. The Watts believe such clarification is important as the findings of this Court may become the law of the case and the conclusions reached have, and will continue to have, an impact on the resolution of this dispute.

The Watts ask this Court to clarify certain findings regarding actions of the Watts after they discovered that Meritage had garnished funds on deposit with Dallas Glass. For ease the Watts highlighting below certain language contained in this court’s Opinion and Order that they seek reconsideration and clarification on. Specifically, this Court wrote at page 16 - “In response, the Watts filed amended schedules and a Chapter 13 plan, seeking to recover the garnished funds as a preferential transfer to be paid to their unsecured creditors.” Further, this Court continued on page 16 - “However, questions of material fact preclude me from deciding whether Meritage breached the settlement agreement when it began assessing new window fines after the Watts sought a preferential transfer in the bankruptcy proceeding.” Finally, this Court concluded at page 17 - “Reasonable factfinders could disagree over whether the Watts’ pursuit of a preferential transfer in the bankruptcy proceeding was an effort to recover or remove the funds from Dallas Glass, thereby justifying Meritage’s imposition of new window fines.” As a result of these findings and conclusion, this Court granted partial summary judgment on the Watt’s third counterclaim. The Watts assert that the disclosure and inclusion of language in their chapter 13 plan was required of them and that they did not seek to recover the garnished funds as a preference.

In support of this Motion, the Watts rely on the court record and pleadings filed herein, in the underlying Chapter 13 Bankruptcy Case No. 14-31295, and in the underlying Adversary Case No. 16-3073. In addition, the Watts rely on the Memorandum of Law filed in Support of this Motion and the Declaration of Wayne Godare.

It is so Moved.

Dated this 11th day of September, 2017.

Michael D. O'Brien & Associates, P.C.

s/ Michael D. O'Brien

Michael D. O'Brien, OSB#951056

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Of Attorney for Defendants

Certificate of Service

All ECF participants will be served via electronic court noticing. Defendants personally served via electronic mail with permission.

Michael D. O'Brien & Associates, P.C.

s/ Michael D. O'Brien

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